No. 92-207

In the Supreme Court of the United States

OCTOBER TERM, 1992

UNITED STATES OF AMERICA, PETITIONER

v.

XAVIER V. PADILLA, ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY BRIEF FOR THE UNITED STATES

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TABLE OF AUTHORITIES

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1. The Simpsons contend (Br. 30-32) that the question presented in our petition concerned only privacy interests, and that because their standing claim rests entirely on property interests, the question presented does not apply to them.

In our petition, we characterized the question presented as whether "membership in a joint venture to transport drugs gives co-conspirators a legitimate expectation of privacy entitling them to challenge the investigatory stop of one of the members of the conspiracy, and the subsequent search of the vehicle he was driving." That question clearly embraced both the seizure (the investigatory stop of the car) and the ensuing search (the search of the car's trunk). We used the term "legitimate expectation of

privacy" because that was the term repeatedly used by the court of appeals to describe its holding in this case. See Pet. App. 9a ("the Simpsons and Xavier Padilla have established a legitimate expectation of privacy"); *id.* at 13a (Maria Simpson "also has established an expectation of privacy"); *id.* at 14a ("We hold, therefore, that because Xavier Padilla and Donald and Maria Simpson have demonstrated joint control and supervision over the drugs and vehicle and engaged in an active participation in a formalized business arrangement, they have standing to claim a legitimate expectation of privacy in the property searched and the items seized.").

The court of appeals used the term "legitimate expectation of privacy" as a shorthand reference to all of the Fourth Amendment interests that might be affected by the police conduct in this case—the right to be free from both an unlawful seizure and an unlawful search.[1] In our petition, we adopted the terminology used by the court of appeals to describe the issue it had decided. In our brief on the merits, we characterized the question presented as whether "membership in a joint venture to transport drugs gives co-conspirators a privacy or property interest entitling them to challenge the investigatory stop of one of the members of the conspiracy and the subsequent search of the car he was driving." We restated the question presented in order to describe more precisely the Fourth Amendment interests that the court of appeals had identified as being at issue in this

[1] The respondents did the same. In their brief in the court of appeals, they characterized the doctrine of Fourth Amendment standing as being "based solely upon 'legitimate expectations of privacy.'" Resp. C.A. Br. 17.

case,[2] and to encompass the arguments that the respondents had intimated (Br. in Opp. 37-38) that they would invoke in support of the judgment below.[3]

In their brief on the merits, the Simpsons do not defend the court of appeals' reasoning in this case, which was explicitly based on the "joint venture" theory of standing. Instead, they argue that they have standing to object to the stop of Arciniega based entirely on their ownership interests in the car Arciniega was driving and the cocaine he was carrying. Then, having recharacterized what they regard as the principal issue in this case, the Simpsons fault us for not having anticipated in our petition the ground on which they would choose to defend the judgment below. They go so far as to suggest that because we did not write the question in a manner that anticipated their response, the petition should be dismissed as improvidently granted.

It is a bold stroke for a respondent to defend the judgment on a different ground from the one used by the court below and then seek dismissal of the petition because the question presented failed to address the respondent's analysis. There is no support

[2] Our rephrasing of the question was consistent with this Court's Rules, see Sup. Ct. R. 24.1(a) ("The phrasing of the questions presented need not be identical with that set forth in the petition for a writ of certiorari * * * but the brief may not raise additional questions or change the substance of the questions already presented.").

[3] See Robert L. Stern, Eugene Gressman & Stephen M. Shapiro, *Supreme Court Practice* 553-554 (6th ed. 1986) ("the Questions Presented in the briefs on the merits should also include points raised by respondent or appellee as matters of defense, so that the Questions Presented will contain all the issues upon which the Court is called to pass").

for such a ploy in this Court's cases, and it should not be allowed to succeed. The question presented in this case adequately encompasses the issue decided by the court of appeals and the issues raised by respondents in their briefs; in any event, however, we would be entitled to answer any new arguments made by respondents in support of the judgment below even if the question presented did not encompass those arguments.

Respondents are also wrong in claiming that the petition should be dismissed because they will not be affected by a resolution of the issue presented in this case. First, as we noted at the petition stage, the "joint venture" standing doctrine was critical to the decision of this case, both in the district court and in the court of appeals. The district court found that the Padillas had standing "solely out of the joint venture aspect of it." Pet. App. 23a. And the court of appeals based its ruling largely on the Simpsons' "participat[ion] in the [criminal] organization, particularly on the day of the stop" (*id.* at 12a), and Xavier Padilla's "coordinating and supervisory role in the operation" (*ibid.*). The court of appeals also directed the district court on remand to base its standing determination with respect to Jorge and Maria Padilla on "whether they were responsible partners of the venture or mere employees in a family operation." *Id.* at 15a. If we are correct that the respondents' participation in the criminal conspiracy does not give them Fourth Amendment rights that they would not otherwise enjoy, we are entitled at the least to a remand to determine whether respondents have standing under the proper Fourth Amendment standard.

Second, both sides have addressed the argument that the Simpsons' ownership interest in the car and possessory interest in the contraband, and Xavier Padilla's supervisory role in the transportation and possessory interest in the contraband are sufficient to give each of them standing. That issue is therefore suitably presented for decision, and there is no reason for the Court not to resolve it. See *Eddings* v. *Oklahoma*, 455 U.S. 104, 114 n.9 (1982). In seeking dismissal of the petition, respondents are simply asking the Court to reconsider the decision that the Court made at the petition stage, where they made a similar argument against granting review; there has been no change of circumstances to suggest that this case is any less suitable for review now than it was when the Court granted the petition.

2. On the merits, respondents have largely abandoned the joint venture standing analysis employed by the court of appeals. The Simpsons rely solely on their ownership of the stopped vehicle and their asserted possessory interest in the cocaine that was incidentally seized when the vehicle was. The Padillas, on the other hand, argue that the Ninth Circuit's joint venture standing doctrine is not really based on the defendants' membership in a criminal enterprise, but is merely a proxy for recognizing that individuals can have property and privacy interests in property that is in the hands of others who happen to be their co-conspirators.[4]

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[4] The brief filed for the three Padillas mentions Jorge and Maria Padilla but focuses almost entirely on the case of Xavier Padilla. The brief takes the position (at 3 n.1) that because the court of appeals remanded the case with respect to Jorge and Maria Padilla, the court's rulings with respect to them "are not contested here." That is not true; we have

The Padillas argue (Br. 25, 47-48) that the Ninth Circuit did not apply a doctrine of *per se* co-conspirator standing, but instead examined the Fourth Amendment interests of each defendant in determining whether he had standing. We recognize, of course, that the Ninth Circuit has not granted standing to every co-conspirator, but has limited the benefits of the joint venture standing rule to conspirators with a supervisory role in the conspiracy. See Pet. 9-11; U.S. Br. 14-15, 27-28. But even in that form, the joint venture standing rule is baseless. An individual's status as a member of a conspiracy—even a supervisory member—has no bearing on whether that individual's personal rights have been implicated by the seizure or the search of another member of the conspiracy, or of property that is used to achieve the goals of the conspiracy. As we have argued (U.S. Br. 11-19), that conclusion follows from this Court's consistent admonition that "Fourth Amendment rights are personal rights which, like some other constitutional rights, may not be vicariously asserted," *Rakas* v. *Illinois*, 439 U.S. 128, 133-134 (1978), and its recognition that "[c]oconspirators and codefendants have been accorded no special standing" under the Fourth Amendment. *Alderman* v. *United States*, 394 U.S. 165, 172 (1969). In short,

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at all stages contested the court of appeals' ruling that Jorge and Maria Padilla would be entitled to standing under the joint venture doctrine if they can show that they had a sufficiently responsible role in the conspiracy. Therefore, if the Court agrees with us that the joint venture standing rule has no place in Fourth Amendment analysis, the court of appeals' remand "to determine whether [Jorge and Maria Padilla] were responsible partners of the venture" (Pet. App. 15a) is erroneous and that aspect of the court of appeals' judgment should be reversed.

interests that arise by virtue of one's role in a conspiracy have no Fourth Amendment currency.

Xavier Padilla does not rely exclusively on the Ninth Circuit's rule granting standing to a conspiracy's leaders, but claims that he had a possessory interest in the car and the cocaine based on his supposed role "as custodian and manager of a vehicle used for a commercial purpose." Br. 12. Relying on the fact that he hired Arciniega to drive the car from Douglas, Arizona, to Phoenix, and was responsible for the arrival of the cocaine in Phoenix, Xavier Padilla claims that he thereby acquired a sufficient interest in the car and the cocaine to render him a victim of the traffic stop, even though he was not present when the stop occurred. Padilla's interests in the car and the cocaine, however, are the interests of a conspirator, not a possessor. Padilla concedes (Br. 20) that he had no Fourth Amendment interest in the person of Arciniega, but he exercised no more dominion and control over the vehicle, which he did not own and in which he never rode, than he did over the person of Arciniega. Similarly, he was never an owner of the cocaine, but merely had a role in attempting to ensure that it was successfully transported to its intended recipient.

In short, Xavier Padilla's role with respect to both the car and the cocaine was that of a dispatcher. A traffic stop of a commercial truck would not violate the Fourth Amendment rights of the dispatcher of the truck—even one who had hired the driver. The same applies to Xavier Padilla. For that reason, even Padilla's effort to characterize the criminal conspiracy as a "business agreement" (see Br. 34) does not help him, because the parties to a "business agree-

ment" to transport goods do not have Fourth Amendment interests that are violated if an agent of the business is stopped while engaged in the transportation.[5] Padilla's argument therefore reduces to a straightforward—and unmeritorious—claim of co-conspirator standing. It should be rejected.

3. The Simpsons have departed even farther from the court of appeals' rationale. Without relying at all on the "joint venture" rationale of the court of appeals, they seek to base their standing solely on their property interest in the car and their asserted possessory interest in the contraband.

a. It is undisputed that the traffic stop of the car Arciniega was driving was a Fourth Amendment seizure. The question before the Court, however, is whether the seizure of the car (and the incidental seizure of the contraband in the car's trunk) implicated the Fourth Amendment rights of the Simpsons or any of the other respondents. Under this Court's cases, respondents' rights were implicated only if the seizure constituted a "meaningful interference with [their] possessory interests in th[e] property."

[5] Even if Padilla's "business agreement" had a formal legal status such as that of a corporation, his claim of standing would fail. Owners and officers of corporations typically do not have Fourth Amendment interests that are affected by searches or seizures of corporate effects, unless the search or seizure has a direct nexus to the individual's personal office or papers. See 4 Wayne R. LaFave, *Search and Seizure* § 11.3(d), at 314-318 (2d ed. 1987); *Mancusi* v. *DeForte*, 392 U.S. 364 (1968); *United States* v. *Mohney*, 949 F.2d 1397 (6th Cir. 1991), cert. denied, 112 S. Ct. 1940 (1992); *United States* v. *Chuang*, 897 F.2d 646 (2d Cir.), cert. denied, 498 U.S. 824 (1990); *United States* v. *Judd*, 889 F.2d 1410 (5th Cir. 1989), cert. denied, 494 U.S. 1036 (1990); *Williams* v. *Kunze*, 806 F.2d 594 (5th Cir. 1986).

United States v. *Jacobsen*, 466 U.S. 109, 113 (1984); see also *Arizona* v. *Hicks*, 480 U.S. 321, 324 (1987); *Maryland* v. *Macon*, 472 U.S. 463, 469 (1985); *United States* v. *Karo*, 468 U.S. 705, 712-713 (1984); *United States* v. *Place*, 462 U.S. 696, 708-709 (1983).

As we argued in our opening brief (U.S. Br. 21-24), the traffic stop in this case did not result in a "meaningful interference" with the Simpsons' ownership interests in the car. The Simpsons had ceded unconditional control over the vehicle to Arciniega, and the brief traffic stop did not in any way affect their anticipated use of the car on its return. Of course, the traffic stop ripened into an arrest of Arciniega and a seizure of the drugs and the car. But the discovery of the drugs was the product of Arciniega's consent.[6] The only illegal conduct at issue here is the traffic stop, and the question therefore is whether the brief detention prior to the discovery of the cocaine constituted a meaningful interference with the Simpsons' possessory interests in the car.

The traffic stop may have resulted in anxiety and inconvenience to Arciniega, but it had no such effect on the Simpsons, who were not present and were not aware of the stop at the time it occurred. In short, the Simpsons did not meet their burden, see *Rawlings* v. *Kentucky*, 448 U.S. 98, 104 (1980), of establishing that the seizure of the vehicle in this case constituted

[6] Respondents assert that the trunk of the car was searched without consent. Simpson Br. 2, 14. The police officer testified without contradiction, however, that Arciniega consented to the search of the entire vehicle. 5/15/90 Tr. 95. The court of appeals did not call into question the validity of Arciniega's consent, see Pet. App. 3a, and that issue is not before this Court.

a meaningful interference with their own Fourth Amendment interests.

The case that is most instructive on this point is *United States* v. *Powell*, 929 F.2d 1190 (7th Cir.), cert. denied, 112 S. Ct. 584 (1991). In a factual setting closely analogous to the one in this case, the court held that the absent owner of a truck that was illegally stopped on the highway did not have standing to object to the stop of the truck. The court explained that the seizure of the vehicle implicated interests that "are personal to the driver and passengers in the car stopped, who have their travel interrupted by the sight of a state patrol cruiser or police car looming large in the rear view mirror, are detained on the side of the road, have their identifying documents inspected by the trooper or policeman, and may even be asked to leave their vehicles for the duration of the questioning." 929 F.2d at 1195. For that reason, the court concluded, "the intrusion a vehicle stop causes is personal to those in the car when it occurs. The personal nature of the interests implicated by a vehicle stop persuade us that a vehicle owner who is not in his car at the time it is stopped should not, absent unusual circumstances * * * have standing to object to the stop." *Ibid.* The court noted that the possessory interest of the vehicle's owner would be implicated only if, for example, the stop lasted so long that it "meaningfully deprive[d] the vehicle owner of the anticipated use of his car or truck." *Ibid.*

The same analysis applies here. Because in this case, as in *Powell*, the stop of the vehicle did not meaningfully deprive the owners of the car of the anticipated use of the car, the absent owners should

not be entitled to obtain the suppression of evidence based on the illegality of the stop.[7]

In an analogous setting, the courts have held that a defendant's Fourth Amendment rights are not violated if the police remove the defendant's checked luggage temporarily from an airline baggage area for an on-the-spot dog sniff. See *United States* v. *Brown*, 884 F.2d 1309, 1311 (9th Cir. 1989); *United States* v. *Lovell*, 849 F.2d 910, 916 (5th Cir. 1988); *United States* v. *Beale*, 736 F.2d 1289, 1292 (9th Cir.) (en banc), cert. denied, 469 U.S. 1072 (1984); *United States* v. *Puglisi*, 723 F.2d 779, 787 (11th Cir. 1984); *United States* v. *Goldstein*, 635 F.2d 356, 361 (5th Cir. 1981); see also *United States* v. *Harvey*, 961 F.2d 1361, 1364 (8th Cir. 1992) (same rule applied to luggage on bus). In that setting, the defendant's "possessory interests were not impaired by the seizure because he had relinquished possession to the airline for a number of hours and had the dog not alerted the luggage would have been immediately returned to the baggage cart with no delay, injury, or impairment. Indeed, the owner would have been oblivious to the entire occurrence." *Puglisi*, 723 F.2d at 786 n.7, 788. Likewise, here, the stop did not affect the Simpsons' possessory interests in the car. The Simpsons had relinquished possession of the car

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[7] Rather than addressing the analysis of the court in *Powell*, the Simpsons argue (Br. 17-18) simply that it rested on the same "cramped reading" of what constitutes a seizure that this Court rejected earlier this Term in *Soldal* v. *Cook County*, 113 S. Ct. 538 (1992). But the Seventh Circuit in *Powell* did not question that a seizure occurs when a vehicle is subject to a traffic stop. The court's analysis turned on the very different point that a traffic stop of a vehicle does not ordinarily implicate an absent owner's "possessory interests."

to Arciniega for hours (at least) at the time of the stop; and if the police had not discovered cocaine in the car, the Simpsons "would have been oblivious to the entire occurrence." See also *United States* v. *Van Leeuwen*, 397 U.S. 249, 253 (1970) ("No interest protected by the Fourth Amendment was invaded" by detaining mailed packages for a day after they were deposited in the mail); *United States* v. *LaFrance*, 879 F.2d 1, 7 (1st Cir. 1989) (brief police detention of a parcel that defendants had consigned to a freight carrier did not "intrude on [defendants'] possessory interest" if it did not delay the delivery of the parcel).

b. The Simpsons argue that it is irrelevant whether the stop of the car had a discernible impact on their possessory interests; they assert, instead, that this Court "has repeatedly held" that "an owner always has the right to contest the seizure of his own property." Simpson Br. 10 (citing *Soldal* v. *Cook County*, 113 S. Ct. 538 (1992); *United States* v. *Jacobsen*, 466 U.S. 109 (1984); *United States* v. *Place*, 462 U.S. 696 (1983); and *Rakas* v. *Illinois*, 439 U.S. 128 (1978)). Their assertion is incorrect, and the cases they cite do not support that proposition.[8]

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[8] *United States* v. *Place* involved the "seizure of personal luggage from the immediate possession of" its owner, and because the owner was in transit, the seizure of the luggage was in effect a seizure of the owner. 462 U.S. at 708. The Court noted that the nature of the intrusion on possessory interests would be far different if the seizure were made "after the owner has relinquished control of the property to a third party." *Id.* at 705. In fact, the Court quoted with approval a commentary on *United States* v. *Van Leeuwen*, 397 U.S. 249 (1970), noting that a 29-hour detention of mailed packages did not intrude upon "either a privacy interest in the packages or a possessory interest in the packages themselves." 462 U.S. at 705-706 n.6. We agree that an absent owner whose property is seized from a bailee *may* have standing to contest its seizure—particularly if the seizure delays the return of the property to the owner for a substantial period. But nothing in *Place* suggests that owners of property *always* have standing to object to the seizure of that property, even when that property is taken from third parties and the duration of the seizure is brief.

United States v. *Jacobsen* is equally unhelpful to respondents. That case involved the search of a package which the defendant had shipped by a private freight carrier and which federal agents had obtained from the carrier. The Court noted that the decision by the agents to exercise dominion and control over the package constituted a seizure. 466 U.S. at 120-121 n.18. That observation, however, did not suggest that the defendants would have had standing to object to a temporary seizure of the package if there had been no accompanying search. The question whether the defendants had a Fourth Amendment interest that was affected by the seizure was not at issue in that case; in fact, the defendants specifically disclaimed any argument based on the legality of the seizure, stating that they "have never challenged the agents' seizure of the package by taking it into custody." 82-1167 Resp. Br. at 26.

The footnote from *Rakas* that respondents cite, 439 U.S. at 142 n.11, merely states that the rule that a temporary visitor may not object to the search of the house he is visiting does not necessarily mean he "could not contest the lawfulness of the seizure of evidence * * * if [his] own property were seized." The footnote certainly does not say that an owner of property automatically has standing to object to any seizure of that property. And nothing in *Soldal* supports such a rule; that case merely stands for the proposition that a seizure may come within the reach of the Fourth Amendment even if it does not result in an invasion of privacy. 113 S. Ct. at 543-548.

It is true that an ownership or possessory interest in property is a necessary condition to contesting its

seizure, but the Court has never intimated, much less held, that ownership, without more, is *always* enough.[9] See *United States* v. *Salvucci*, 448 U.S. 83, 91 (1980) (citation omitted) ("While property ownership is clearly a factor to be considered in determining whether an individual's Fourth Amendment rights have been violated, property rights are neither the beginning nor the end of this Court's inquiry."). On the contrary, since rejecting the "automatic standing" rule of *Jones* v. *United States*, 362 U.S. 257 (1960), the Court has required an analysis of the interests affected by a particular search or seizure in determining questions of standing. See *Rawlings* v. *Kentucky*, 448 U.S. at 105.

In spite of this Court's recent decisions on Fourth Amendment standing, the Simpsons advocate a *per se* rule that a seizure of property in which one has an ownership interest *always* meaningfully interferes with that interest, no matter what the circumstances and no matter whether there was any actual injury to the owner or impairment of his enjoyment of the property. In the view pressed by the Simpsons, a seizure of one's property—even if he has given up control of the property, has no expectation of its imminent return, and may be hundreds of miles away —constitutes a "meaningful" Fourth Amendment injury in every case.

That argument, which is based on the notion that a seizure of property always works some abstract

[9] In fact, this Court has held that an interference with an owner's property interests does *not* necessarily violate the owner's Fourth Amendment rights. *United States* v. *Karo*, 468 U.S. at 712-713 (physical trespass "is neither necessary nor sufficient to establish a constitutional violation"); *Oliver* v. *United States*, 466 U.S. 170, 176-177 (1984).

injury on the owner, relies on nothing more than the "arcane distinctions developed in property * * * law," *Rakas*, 439 U.S. at 143, that the Court has repudiated as the test for determining whether an individual has a Fourth Amendment interest. Our submission, consistent with this Court's cases, is that ownership is a significant, but not dispositive, factor. And, under the circumstances of this case, the Simpsons' ownership of the car did not convert the brief traffic stop of Arciniega into a violation of the Simpsons' right to be free from unreasonable searches and seizures.[10]

[10] *Cardwell* v. *Lewis*, 417 U.S. 583 (1974), does not support the Simpsons' assertion that an ownership interest gives an individual standing to object to a seizure in all circumstances. In *Cardwell*, the police arrested the defendant and impounded his automobile, which had been parked in a public lot near the police station. The police then refused the defendant's request to allow his wife and family to reclaim the car. 417 U.S. at 595 (plurality opinion). Although the question of standing was not raised in that case, it was obvious that the permanent seizure of the defendant's car from where he had left it (and where he had every reason to expect it to remain) meaningfully intruded on his rights as the car's owner—including the right to have his wife and family gain possession of the vehicle. *Cardwell* thus says nothing about whether the Simpsons' rights as owners of the vehicle in this case were affected by the brief traffic detention while Arciniega was using the car to transport the cocaine. The lower court cases cited by the Simpsons for the proposition that "absent owners have the right to object to the temporary investigative seizure of their property," Simpson Br. 16, likewise do not support their claim that the owners of property have a *per se* right to object to seizures, regardless of the circumstances. *United States* v. *Kelly*, 529 F.2d 1365 (8th Cir. 1976), and *United States* v. *House*, 524 F.2d 1035, 1042 & n.12 (3d Cir. 1975), did not involve temporary seizures; in *Kelly* an FBI agent took materials that were contained in a shipment addressed to the defendant and kept them, and in *House* an IRS agent

4. Respondents also argue (Simpson Br. 19-20; Padilla Br. 20-21) that their possessory interests in the cocaine in the car's trunk give them standing to challenge the stop of the car. Even assuming that respondents had a legitimate possessory interest in the contraband, the incidental seizure of the cocaine did not in any sense "meaningfully interfere" with that interest. They therefore should not be permitted to challenge the legality of the stop based on the fact that the cocaine was stopped at the same time the car was.

a. The brief detention of the cocaine associated with the traffic stop did not "meaningfully interfere" with respondents' possessory interests any more than did the brief detention of the car itself. See U.S. Br. 24-27. The seizure of the cocaine incident to the stop of the vehicle was no different than the seizure of a spare tire that might also have been in the trunk, or of a weapon or money that might have belonged to

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took the defendant's papers to his office for an extended period of time. In *United States* v. *Haes*, 551 F.2d 767, 769 (8th Cir. 1977), the court found standing based on the defendant's status as the victim of a search. The court did not address whether the defendant would have had standing to object to a temporary seizure by itself.

In *United States* v. *Shaefer*, 637 F.2d 200 (3d Cir. 1980), the court held that a corporation and its president were entitled to contest the investigative stop of the company's trucks. The court based its standing decision on the fact that the two defendants were exercising their possessory interest in the trucks through their agent-drivers and on the defendants' interests in the documents that were seized and examined as a result of the stops. While we believe that the court erred to the extent that it based the president's standing on the stop of his employees, the court did not go as far as respondents would go and adopt a *per se* rule of owner standing.

respondents but was being carried by Arciniega. The traffic stop did not have any significant effect on the possessory rights of the respondents to property that they had entrusted to Arciniega, including the cocaine. It was not until the temporary stop ripened into a consensual search of the vehicle, which led to the discovery of the cocaine, that respondents' interests in the cocaine—whatever those interests were—were significantly affected.[11]

Respondents contend that a "possessory interest in an item is a sufficient predicate to challenge the seizure of that item, notwithstanding the fact that it is contraband." Simpson Br. 24; see also Padilla Br. 36-37. They urge, moreover, that this issue is easily resolved, because the government has "admitted" that they had such a possessory interest by indicting them for possession of the cocaine.[12] It is, however, "clearly establish[ed] that a prosecutor may simultaneously maintain that a defendant criminally possessed the seized good, but was not subject to a Fourth Amend-

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[11] Respondents' true quarrel is not with the seizure of the cocaine that was incidental to the vehicle's stop, but with its discovery as part of the subsequent consensual search of the trunk. It is clear, however, that it was perfectly appropriate for the officers to seize the cocaine when they discovered it, and that in doing so they violated no rights of respondents. See *Horton* v. *California*, 496 U.S. 128, 134 (1990); *Texas* v. *Brown*, 460 U.S. 730, 738-739 (1983) (plurality opinion); *Payton* v. *New York*, 445 U.S. 573, 587 (1980).

[12] We note that, in proving respondents' substantive crime of possession of the cocaine, the government is not required to prove that their possession extended to the time the cocaine was discovered on the highway. See *Brown* v. *United States*, 411 U.S. 223, 228 (1973) ("the Government's case * * * does not depend on petitioners' possession of the seized evidence at the time of the contested search and seizure").

ment deprivation, without legal contradiction." *Salvucci*, 448 U.S. at 90 (citing *Rakas* v. *Illinois*, 439 U.S. 128 (1978)). Respondents' argument is nothing more than an effort to resurrect the long-discarded "unexamined assumption" in *Jones* v. *United States*, 362 U.S. 257 (1960), that "a defendant's possession of a seized good sufficient to establish criminal culpability was also sufficient to establish Fourth Amendment 'standing,'" *Salvucci*, 448 U.S. at 90.

b. In any event, we do not believe that, for Fourth Amendment purposes, respondents had any possessory interest in the cocaine. To the extent that they claim such an interest arising out of their participation in the conspiracy to transport the drugs, that claim fails for the same reason that their claim with respect to the vehicle does. See U.S. Br. 13-19, 24-27. Moreover, respondents do not claim to have owned the drugs; at most, they served as bailees for the drugs, which they were jointly responsible for transporting. Respondents therefore have an even more attenuated interest in the cocaine than did the defendant in *Rawlings* v. *Kentucky*, *supra*. There, after the defendant put his drugs in his companion's purse, the Court held that he lacked standing to object to the search of the purse and the seizure of the drugs. 448 U.S. at 105-106. The fact that the defendant claimed a possessory right in the drugs did not give him standing to raise a Fourth Amendment claim with respect to the invasion of the purse. By direct analogy respondents' asserted possessory interest in the cocaine does not give them standing to object to the traffic stop of Arciniega.

Finally, respondents cannot be said to have had a legitimate possessory interest in the cocaine. As the Court stated in *Jacobsen*, "Congress has decided—

and there is no question about its power to do so—to treat the interest in 'privately' possessing cocaine as illegitimate." 466 U.S. at 123. See also *Brown* v. *United States*, 411 U.S. 223, 230 n.4 (1973). Consistent with that view, this Court has recognized that the authorities may seize contraband when they see it, a rule that is based on the premise that the possessor of contraband is not entitled to retain possession. See, *e.g.*, *Horton* v. *California*, 496 U.S. 128, 134 (1990); *Illinois* v. *Andreas*, 463 U.S. 765, 771 (1983); *Payton* v. *New York*, 445 U.S. 573, 587 (1980).[13] Respondents may not base their Fourth

[13] Respondents object to what they view as the sweeping nature of this argument. In fact, however, the argument is much more limited than they recognize. For practical purposes, it is rare for the authorities to *seize* contraband without also *searching* for it. And it is well established that one does not lose his expectation of privacy in a place simply because he has stored contraband there. See *Salvucci*, 448 U.S. at 93; *Rawlings* v. *Kentucky*, 448 U.S. at 104-106.

The Simpsons rely (Br. 25) on *Trupiano* v. *United States*, 334 U.S. 699 (1948), and *United States* v. *Jeffers*, 342 U.S. 48 (1951), for the proposition that contraband is protected from illegal seizure. The decision in *Trupiano*, however, turned on the Court's unwillingness to apply the "search incident to arrest" doctrine to uphold a seizure that followed a warrantless entry into private premises. See 334 U.S. at 705-710. To the extent that *Trupiano* suggests that police may not seize contraband without a warrant, later cases, such as *Texas* v. *Brown*, 460 U.S. 730 (1983), and *United States* v. *Jacobsen*, 466 U.S. at 123, have established a different rule. See also *United States* v. *Rabinowitz*, 339 U.S. 56, 66 (1950) (overruling *Trupiano* "[t]o the extent that [it] requires a search warrant solely upon the basis of the practicability of procuring it rather than upon the reasonableness of the search after a lawful arrest"). With respect to *Jeffers*, the Court has recognized that standing in that case was based on the

Amendment claim on a possessory right that the law does not allow them to have.

* * * *

For the foregoing reasons and those stated in our opening brief, the judgment of the court of appeals should be reversed as to respondents Donald and Maria Simpson, Xavier Padilla, Jorge Padilla, and Maria Padilla. As to respondent Warren Strubbe, the judgment of the court of appeals should be affirmed.

Respectfully submitted.

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Acting Solicitor General

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defendant's "possessory interest in both the premises searched and the property seized." *Rakas*, 439 U.S. at 136; *Salvucci*, 448 U.S. at 91 n.5.

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